So. 70. Boarders, on the other hand, must retreat to their own rooms, at least when attacked by another inhabitant of the house. *People* v. *Sullivan*, 7 N. Y. 396; *State* v. *Dyer*, 147 Ia. 217, 124 N. W. 629. In opposition, however, to the whole doctrine exempting one attacked in the dwelling-house from the duty to retreat, it may be argued that when the assailant has entered the "castle," it has ceased to be protection for the owner, and that there is accordingly no longer reason why he should not flee to avoid the necessity of killing. See MAY, CRIMINAL LAW, 2 ed., § 67.

SURETYSHIP — SURETY'S DEFENSES: MISCELLANEOUS — EFFECT OF ASSIGNMENT OF BUILDING CONTRACT BY CONTRACTOR ON RIGHTS OF MATERIALMEN. — The defendant company was surety on the bond of a contractor for the faithful performance of a contract with the United States for the erection of a naval station, and for the prompt payment of all persons supplying "labor and materials in the prosecution of the work." The contractor, being unable to complete the work, transferred his business, without the knowledge of the United States or the defendant, to a new corporation of which he was manager. The materialmen continued to furnish materials to this corporation with knowledge of the assignment, and on the bankruptcy of the contractor and the new corporation, seek to hold the surety company on the bond. *Held*, that they may recover. *The John Davis Co.* v. *Illinois Surety Co.*, 47 Chic. Leg. News 177 (C. C. A., Seventh Circ.).

Sureties on the bonds of contractors for the prompt payment of all persons furnishing labor and materials for the work are generally held directly liable to materialmen. *Abbott* v. *Morrissette*, 46 Minn. 10, 48 N. W. 416. Such a bond is construed as essentially a substitute for a mechanics' lien, and extends to materials furnished to a sub-contractor or assignee. *Hill* v. *American Surety Co.*, 200 U. S. 197; see *Hardaway* v. *National Surety Co.*, 150 Fed. 465, 471. Accordingly, the surety may remain liable on his independent obligation to the materialmen, although discharged from his undertaking to the landowner by some act of the latter. *Doll* v. *Crume*, 41 Neb. 655, 59 N. W. 806. In the principal case, therefore, even the acceptance of a new contractor by the government would not in itself have discharged the defendant from its obligation to the materialmen. The absence of such assent, however, did show that there had been no novation of principals, and that the continued furnishing of materials by the materialmen did not involve, therefore, any recognition of a new principal on their part. The materialmen, then, must be deemed simply to have taken the new corporation as additional security, and to have retained their rights against the contractor. Such conduct clearly could give the surety no legal defense, and any variation of the risk that might be involved would be too unsubstantial to discharge the surety, in view of the growing tendency of the law to hold surety companies to their obligations in spite of metaphysical variations of the risk. See *Rule* v. *Anderson*, 160 Mo. App. 347, 142 S. W. 358.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — FEDERAL AGENCY: STATE TAXATION OF INDIAN COAL MINES. — The United States leased the right to operate coal mines on lands in Oklahoma belonging to the Choctaw and the Chickasaw Indians, to the plaintiff, under a compact with the Indians to operate the mines in the interests of the tribes. Oklahoma then levied a gross revenue tax on all coal producers. *Held*, that the plaintiff is exempt from the tax. *Choctaw, Oklahoma, & Gulf R. Co.* v. *Harrison*, 235 U. S. 292.

That neither state nor nation can clog the governmental functions of the other by taxation is a necessary and an established proposition. *McCulloch* v. *Maryland*, 4 Wheat. (U. S.) 316; *Collector* v. *Day*, 11 Wall. (U. S.) 113. But what constitutes a governmental function is a perennial problem, not

easily solved. One clear-cut line has been drawn. No enterprise ordinarily regarded as private becomes a governmental function simply because undertaken by a state. *South Carolina* v. *United States*, 199 U. S. 437. See 19 HARV. L. REV. 286. The principal case suggests that there is no corresponding limitation when an otherwise private industry is indulged in by the national government. Whatever the latter does, it does by virtue of its express or implied powers, and is supreme, even though what it has undertaken to do conflicts with what would otherwise be within the constitutional power of the state. *Veazie Bank* v. *Fenno*, 8 Wall. (U. S.) 533. *Cf. Briscoe* v. *Bank of Kentucky*, 11 Pet. (U. S.) 257. See 23 HARV. L. REV. 465. Nowhere is the independence of the federal government better recognized than in its relations with the Indians. In this field its control is exclusive. *Worcester* v. *Georgia*, 6 Pet. (U. S.) 515. See *Cherokee Nation* v. *Georgia*, 5 Pet. (U. S.) 1, 17; *United States* v. *Holliday*, 3 Wall. (U. S.) 407, 417. Accordingly, whatever it undertakes in their behalf it will see through, despite attempted interference by state taxing power. This freedom from state taxation, however, is limited narrowly to the accomplishment of the federal purpose. *Railroad Co.* v. *Peniston*, 18 Wall. (U. S.) 5; *National Bank* v. *Commonwealth*, 9 Wall. (U. S.) 353. Hence, in the principal case, the court intimates that a tax on the coal after it had become the personal property of the lessee would be valid. See *Thomas* v. *Gay*, 169 U. S. 264, 273.

TAXATION — WHERE PROPERTY MAY BE TAXED — SUCCESSION TAX ON SECURITIES TEMPORARILY REMOVED FROM THE STATE. — The testatrix, who was domiciled in Florida, carried on a loaning business in Iowa through an agent there. The notes and mortgages securing the loans, which had been kept in Iowa, were removed, a short time before the testatrix's death, to a bank across the state line. *Held*, that they are subject to the Iowa inheritance tax. *In re Adam's Estate*, 149 N. W. 531 (Ia.).

An inheritance tax is the price exacted by the state for conferring the privilege of inheriting property by will or descent. Accordingly, the state where the property is located may tax its succession. *Matter of Whiting*, 150 N. Y. 27, 44 N. E. 715. But a mere chose in action, being intangible, properly has no *situs* anywhere. See 27 HARV. L. REV. 107, 113. Least of all can it be said to be located in the obligor's hands. *State Tax on Foreign Held Bonds*, 15 Wall. (U. S.) 300. Therefore a debt owed to a foreign decedent is not, as such, subject to an inheritance tax. *Matter of Preston*, 75 N. Y. App. Div. 250, 78 N. Y. Supp. 91. But see *Contra, In re Joyslin's Estate*, 76 Vt. 88, 56 Atl. 281. However, if the debt is represented by a specialty, the specialty itself, being capable of *situs*, may be taxed wherever found. *New Orleans* v. *Stempel*, 175 U. S. 309; *Wheeler* v. *Sohmer*, 233 U. S. 434. See 28 HARV. L. REV. 104. This reasoning will account for the principal case only on the assumption that the securities were removed from the state in order to evade taxation. See *Buck* v. *Beach*, 206 U. S. 392, 408; *Poppleton* v. *Yamhill County*, 8 Ore. 337. In any event, however, the capital employed in the loaning business, as measured by the notes, was in a sense the testatrix's stock in trade, with a *situs* in Iowa, and upon this ground also the tax may be upheld. *Metropolitan Life Ins. Co.* v. *New Orleans*, 205 U. S. 395. See 28 HARV. L. REV. 214.

TORTS — INTERFERENCE WITH BUSINESS OR OCCUPATION — JUSTIFICATION: STRIKE TO COMPEL DISCHARGE OF NON-UNION MEN. — The defendants, members of a trade union, by threatening a strike, induced their employers to discharge the plaintiffs, and to refuse to reëmploy them on the ground that they had refused to join the union. *Held*, that the plaintiffs are entitled to damages and to an injunction. *Fairbanks* v. *McDonald*, 106 N. E. 1000 (Mass.).

The temporal interests of both workingmen and employers are protected